

**ASSEMBLY BILL**

**No. 2189**

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**Introduced by Assembly Member Garcia**

February 20, 2014

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An act to amend Sections 60305, 60306, 60307, 60315, and 60317 of, and to add Section 60306.5 to, the Water Code, relating to water replenishment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2189, as introduced, Garcia. Water replenishment districts: replenishment assessment.

Article XIII D of the California Constitution generally requires that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Article XIII D of the California Constitution. Existing law provides notice, protest, and hearing procedures for the levying of new or increased fees and charges by local government agencies pursuant to Article XIII D of the California Constitution.

Existing law, the Water Replenishment District Act, provides for the formation of water replenishment districts and grants authority to a water replenishment district relating to the replenishment, protection, and preservation of groundwater supplies within that district. The act requires the governing board of each district to follow specified procedural processes when determining whether to assess, and the amount of, a replenishment assessment. The act requires the board to hold a public hearing to determine whether and to what extent a

replenishment assessment should be levied and for the board to provide public notice of the hearing in each affected county, as specified. The act requires the board, after completing the hearing, to make certain findings and determinations. If the board determines that a replenishment assessment should be levied upon the production of groundwater from groundwater supplies, the act requires the board to fix the replenishment assessment at a uniform rate per acre-foot of groundwater produced.

This bill would revise and recast these provisions to conform the act to Article XIID of the California Constitution. The bill would require the board to make the specified findings and determinations before holding the public hearing and would require the board to give written notice by mail to operators of water-producing facilities within the district that would be subject to the proposed replenishment assessment, as specified. By requiring the board to make the specified findings and determinations at an earlier date, this bill would increase the duties of local officials and would impose a state-mandated local program. The bill would require the replenishment assessment be based upon the proportion of the costs actually incurred by the assessed operator of a water-producing facility. The bill would authorize an operator of a water-producing facility to submit a written protest opposing the replenishment assessment and would prohibit the board from imposing the replenishment assessment if a majority protest exists, as specified. The bill would prohibit a replenishment assessment from being extended, imposed, or increased under certain conditions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 60305 of the Water Code is amended to
- 2 read:
- 3 60305. On or before the second Tuesday in March of each year,
- 4 and provided the survey and report called for by Section 60300

has been made, the board, by resolution, shall declare *board shall do all of the following:*

(a) *Declare, by resolution,* whether funds shall be raised to purchase water for replenishment during the next ensuing fiscal year and whether the funds shall be raised either by (a) a water charge, as provided in Chapter 2 (commencing with Section 60245) of Part 5, (b) a general assessment, as provided in Chapter 3 (commencing with Section 60250) of Part 5, (c) a replenishment assessment as provided in this chapter, or (d) a combination of any two or more of the foregoing, and whether the funds ~~so~~ to be raised, whether by a water charge, a general assessment, a replenishment ~~assessment~~ *assessment*, or a combination of those means, will benefit, directly or indirectly, all of the persons or real property and improvements within the district. The resolution shall also declare whether funds shall be raised to remove contaminants from groundwater supplies during the next ensuing fiscal year or to exercise any other power under Section 60224, and whether funds for that purpose shall be raised by a replenishment assessment as provided in this chapter, with a like statement of benefit.

(b) *Comply with the requirements of Section 60315.*

(c) *Comply with the requirements of Section 60316.*

SEC. 2. Section 60306 of the Water Code is amended to read:

60306. (a) If the board, by resolution, determines that all or a portion of the funds needed to purchase replenishment water, or to remove contaminants from the groundwater supplies of the district, or to exercise any other power under Section 60224, shall be raised by the levy of a replenishment assessment, ~~then~~ *and after the board makes the findings and determinations required by Sections 60315 and 60316,* the board shall immediately publish a notice that a public hearing will be held on the ~~second Tuesday of April~~ *fourth Tuesday of May* for the purpose of ~~determining~~ *considering the board's determination regarding* whether and to what extent the estimated costs ~~thereof~~ *of purchasing replenishment water, removing contaminants from the groundwater supplies of the district, or exercising any other power under Section 60224* for the ensuing year shall be paid for by a replenishment assessment. The notice shall contain a copy of the board's resolution, the time and place of the hearing, ~~and~~ an invitation to all interested parties to attend and be heard in support of or

1 opposition to the proposed assessment, the engineering survey and  
2 report, and the board's determination, and shall invite inspection  
3 of the engineering survey and report upon which the board acted.  
4 The notice shall be published in each affected county pursuant to  
5 Section 6061 of the Government Code, at least 10 days before the  
6 hearing date.

7 *(b) In addition to the notice requirements of subdivision (a), the*  
8 *board shall identify, and give written notice by mail to, operators*  
9 *of water-producing facilities within the district that would be*  
10 *subject to the proposed replenishment assessment. The notice shall*  
11 *be provided at least 45 calendar days before the date of the hearing*  
12 *and shall include all of the following:*

13 *(1) The proposed replenishment assessment to be imposed on*  
14 *each parcel.*

15 *(2) The basis upon which the replenishment assessment was*  
16 *calculated, as determined by the board pursuant to subdivision*  
17 *(f).*

18 *(3) The reason for the replenishment assessment.*

19 *(4) The date, time, and location of the public hearing required*  
20 *pursuant to this section.*

21 *(c) To fulfill the requirements of subdivision (b), the board may*  
22 *send a general notice to all operators of water-producing facilities*  
23 *that would be subject to the proposed replenishment assessment*  
24 *and may include on the general notice the different applicable*  
25 *rates that apply to different areas of the district.*

26 *(d) An operator of a water-producing facility that would be*  
27 *subject to the proposed water replenishment assessment may submit*  
28 *a written protest to the board opposing the proposed replenishment*  
29 *assessment. An operator of a water-producing facility that would*  
30 *be subject to the proposed replenishment assessment may submit*  
31 *one written protest for each parcel with a water-producing facility*  
32 *under the operator's control that would be subject to the proposed*  
33 *replenishment assessment.*

34 *(e) At the conclusion of the public hearing, the board shall*  
35 *consider all written protests against the proposed replenishment*  
36 *assessment and if a majority protest exists, the board shall not*  
37 *impose the replenishment assessment. A majority protest exists if*  
38 *the submitted written protests against the replenishment assessment*  
39 *represent a majority of the number of parcels identified pursuant*  
40 *to this subdivision.*

1     (f) *The board shall determine the amount of the proposed*  
2     *replenishment assessment that would be imposed upon the*  
3     *operators of water-producing facilities within the district. The*  
4     *assessment shall be based upon the proportion of the costs actually*  
5     *incurred by the assessed operator and may vary depending on the*  
6     *location of the parcel.*

7     SEC. 3. Section 60306.5 is added to the Water Code, to read:

8     60306.5. (a) A replenishment assessment shall not be extended,  
9     imposed, or increased unless all of the following are met:

10    (1) Revenue derived from the replenishment assessment does  
11    not exceed the funds required to purchase the replenishment water,  
12    to remove contaminants from the groundwater supplies of the  
13    district, or to exercise any other power under Section 60224.

14    (2) Revenue derived from the replenishment assessment is not  
15    used for any purpose other than to purchase replenishment water,  
16    to remove contaminants from groundwater supplies of the district,  
17    or to exercise any other power under Section 60224.

18    (3) The amount of the replenishment assessment imposed upon  
19    a parcel with a water-producing facility or any person as an incident  
20    of ownership of a water-producing facility does not exceed the  
21    proportional costs of the service attributable to the water-producing  
22    facility. The proportional cost of the service attributable to the  
23    water-producing facility shall be determined either based on the  
24    basin the parcel with the water-producing facility overlies or by  
25    zones of benefit determined by the board.

26    (b) A replenishment assessment shall not be imposed upon a  
27    person for a service unless that service is actually used by, or  
28    immediately available to, that person. Replenishment assessments  
29    based on potential or future use of a service are not permitted.

30    (c) A replenishment assessment shall not be imposed for general  
31    services that are provided to the public, including, but not limited  
32    to, conservation and gardening programs, if the service is available  
33    to the general public in substantially the same manner as it is  
34    available to the operator of a water-producing facility.

35    SEC. 4. Section 60307 of the Water Code is amended to read:

36    60307. ~~Said hearing~~ *The public hearing required pursuant to*  
37    *this chapter* shall be held before the board and a quorum shall be  
38    present. The hearing may be adjourned from time to time by the  
39    ~~president or president, presiding officer or officer, or hearing officer~~

1 but shall be completed by the ~~first~~ *second* Tuesday in ~~May~~ next of  
2 the following *June*.

3 SEC. 5. Section 60315 of the Water Code is amended to read:

4 60315. ~~Upon completing the hearing, but no~~ *No* later than the  
5 second Tuesday in ~~May~~ *March*, the board shall, by resolution, find  
6 all of the following:

7 (a) The annual overdraft for the preceding water year.

8 (b) The estimated annual overdraft for the current water year.

9 (c) The estimated annual overdraft for the ensuing water year.

10 (d) The accumulated overdraft as of the last day of the preceding  
11 water year.

12 (e) The estimated accumulated overdraft as of the last day of  
13 the current water year.

14 (f) The total production of groundwater from the groundwater  
15 supplies within the district during the preceding water year.

16 (g) The estimated total production of groundwater from the  
17 groundwater supplies within the district for the current water year.

18 (h) The estimated total production of groundwater from the  
19 groundwater supplies within the district for the ensuing water year.

20 (i) The changes during the preceding water year in the pressure  
21 levels or piezometric heights of the groundwater contained within  
22 pressure-level areas of the district, and the effects ~~thereof~~ *of the*  
23 *changes in the pressure levels or piezometric heights* upon the  
24 groundwater supplies within the district.

25 (j) The estimated changes during the current water year in the  
26 pressure levels or piezometric heights of the groundwater contained  
27 within pressure-level areas of the district, and the estimated effects  
28 ~~thereof~~ *of the changes in the pressure levels or piezometric heights*  
29 upon the groundwater supplies within the district.

30 (k) The quantity of water that should be purchased for the  
31 replenishment of the groundwater supplies of the district during  
32 the ensuing water year.

33 (l) The source and estimated cost of water available for the  
34 replenishment.

35 (m) The estimated costs of replenishing the groundwater supplies  
36 with the water ~~so~~ purchased.

37 (n) The estimated costs of purchasing, in water years succeeding  
38 the ensuing water year, that portion of the quantity of water ~~which~~  
39 *that* should be purchased for the replenishment of the groundwater  
40 supplies of the district during the ensuing water year, but ~~which~~

1 *that* is estimated to be unavailable for purchase during the ensuing  
2 water year; estimated costs shall be based on the estimated price  
3 of water for replenishment purposes during the ensuing water year.

4 (o) The estimated rate of the replenishment assessment required  
5 to be levied upon the production of groundwater from the  
6 groundwater supplies within the district during the ensuing fiscal  
7 year for the purposes of accomplishing the replenishment and  
8 providing a reserve fund to purchase in future years, when  
9 available, that portion of the quantity of water ~~which that~~ should  
10 be purchased for the replenishment of the groundwater supplies  
11 of the district during the ensuing water year, but ~~which that~~ is  
12 estimated to be unavailable for purchase during that ensuing water  
13 year.

14 (p) Whether any contaminants should be removed from  
15 groundwater supplies during the ensuing fiscal year, and whether  
16 any other actions under Section 60224 should be undertaken during  
17 the ensuing fiscal year, the estimated costs ~~thereof of removing~~  
18 *contaminants from groundwater supplies or other actions under*  
19 *Section 60224*, and the estimated additional rate of replenishment  
20 assessment required to be levied upon the production of  
21 groundwater from the groundwater supplies within the district  
22 during the ensuing fiscal year for those purposes.

23 (q) Whether any program for removal of contaminants or other  
24 actions under Section 60224 should be a multiyear program or is  
25 a continuation of a previously authorized multiyear program.

26 (r) The amount, ~~if any, by which~~ the estimated reserve funds  
27 on hand at the end of the current fiscal year ~~will exceed~~ *exceeds*  
28 the annual reserve fund limit determined pursuant to Section 60290.

29 SEC. 6. Section 60317 of the Water Code is amended to read:

30 60317. If the board determines that a replenishment assessment  
31 shall be levied upon the production of groundwater from  
32 groundwater supplies within the district during the ensuing fiscal  
33 year, ~~immediately~~ following the making of that determination the  
34 board shall levy a replenishment assessment on the production of  
35 groundwater from the groundwater supplies within the district  
36 during the fiscal year commencing on ~~July 1st next~~ *the following*  
37 *July 1*, and the replenishment assessment shall be fixed by the  
38 board at a ~~uniform~~ rate per acre-foot of groundwater ~~so~~ produced.  
39 ~~The producers of that groundwater shall pay the replenishment~~  
40 ~~assessment to the district at the times and in the manner provided~~

1 ~~in this division. That~~ *replenishment assessment shall be imposed*  
2 *upon each parcel with a water-producing facility within the district*  
3 *and shall be paid by the operator of the water-producing facility*  
4 *pursuant to the provisions of Chapter 4 (commencing with Section*  
5 *60325). The part of the assessment levied pursuant to the*  
6 *determination provided in subdivision (c) of Section 60316,*  
7 *exclusive of any part—thereof of the assessment for district*  
8 *administrative and overhead expenses, shall not exceed 50 percent*  
9 *of the average assessment levied for the current and four preceding*  
10 *fiscal years pursuant to determinations under subdivisions (a) and*  
11 *(b) of Section 60316, exclusive of any part—thereof of the*  
12 *assessment for district administrative and overhead expenses.*

13 SEC. 7. If the Commission on State Mandates determines that  
14 this act contains costs mandated by the state, reimbursement to  
15 local agencies and school districts for those costs shall be made  
16 pursuant to Part 7 (commencing with Section 17500) of Division  
17 4 of Title 2 of the Government Code.